



Sub-Committee of the ICAO Legal
Committee on the study of
international interests in mobile
equipment (aircraft equipment)



UNIDROIT Committee of governmental
experts for the preparation of a draft
Convention on International Interests
in Mobile Equipment and a draft
Protocol thereto on Matters specific
to Aircraft Equipment

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SECOND JOINT SESSION

(Montreal, 24 August – 3 September 1999)

DRAFT REPORT

PLENARY SESSION

3 September 1999

The attached constitutes material on Agenda Item 3, 6, 7 and 8.

Agenda Item 3: Organisation of Work

3:5 The Plenary discussed the mandate of the PILWG, on the basis of Flimsy No. 5, a document which indicated the Secretariats' proposals for the topics to be considered by the PILWG. The Secretary General of Unidroit pointed out that an addition should be made under point 1 (a), so that the PILWG could also examine the relationship of the future Convention/Aircraft Protocol with the Chicago Convention. It was suggested that this should be added as item (i), and that the other Conventions should be renumbered. It was pointed out that the Annexes to the Chicago Convention should also be included in the PILWG's examination. One observer suggested that the PILWG's task in relation to the Chicago Convention should be seen simply in terms of aligning the draft Convention and Protocol with that Convention, rather than seeking to make a full examination of the relationship between the instruments. Another delegation pointed out that the relationship with the other four Conventions should be examined in relation to both the draft Convention and the draft Protocol. It was suggested that the title for point number 3 was confusing and should be replaced with the words «Final Clauses». The Secretary General of UNIDROIT indicated that paragraph (c) «Other matters relating to Final clauses» should be added under point 3. Several delegations made further suggestions for technical aspects that should be addressed by the PILWG under point 3, such as the reciprocity rule, the question of entry into force, federal state clauses (both extension of application and interpretation clauses), and the harmonisation of the final clauses between the draft Convention and Protocol. Under point 4, it was pointed out that transitional provisions should be examined not only in relation to the draft Convention, but also the draft Protocol. Another delegation also pointed out that such provisions were not limited to Article 38, but that the PILWG should rather examine the impact of international interests on existing registered interests in general. It was also suggested that the PILWG examine the transitional provisions in relation to the Geneva Convention Contracting and non-Contracting States. Under point 5, several delegations proposed that not only the issue of immunity, but also that of privileges be addressed by the PILWG. Another delegation requested that the PILWG examine immunity in relation to the possible structure of the Supervisory Authority and the Registrar. It was agreed that the question of the liability of the Supervisory Authority and the Register should be added to point 5. Furthermore, it was pointed out by one observer that the mandate of the PILWG should also include the requirement to produce a paper for Governments to consider before the next Joint Session, and that this was not provided for in Flimsy No. 5. On the issue of priority among the topics to be covered by the PILWG, the Plenary accepted the current wording of the mandate as contained in Flimsy no 5, since each heading followed a logical sequence. Some delegations proposed, however, that the list did not reflect a particular order of priority. It was suggested that point 1 (a) was of particular importance, followed by point 2 (a). It was pointed out that point 2(b) should also be given priority. Another delegation however, cautioned against giving priority among the various items in the PILWG mandate, since they were of equal importance. It was decided that these opposing views could be reconciled by allowing the PILWG to refer individual items on the list of items for consideration by the PILWG for consideration by different members of the PILWG. The Plenary approved the mandate of the PILWG as contained in Flimsy No. 5, subject to the changes suggested.

Agenda Item 6: Future Work

6:1 The Chairman of the PILWG indicated that, in the light of the broad tasks which the Plenary had entrusted to the Working Group, it would be necessary to convene a formal meeting in order to enable the Group to finalize its work within the envisaged time-frame. The Plenary endorsed the convening of such meeting on the understanding that the PILWG would already commence its work prior to such meeting. Commenting on the budgetary implications of the planned meeting, the Director of the Legal Bureau of ICAO indicated that efforts would be made to find the required resources in order to support the meeting.

6:2 The Chairman of the Drafting Committee accepted the task which the Plenary had entrusted to him. With a view to ensuring an appropriate representation within the Chairman's «group of friends» of aviation expertise, he supported broadening its membership to include Dr. K. El-Hussainy (Egypt), Chairman of the ICAO Legal Committee, and Mr. H.-G. Bollweg (Germany), Head of the Aviation Law Department of the Ministry of Justice.

6:3 The observer from IATA informed the Plenary about the contents of a statement prepared by IATA. The observer primarily expressed concern as to the pace of the decision-building process with respect to the new legal instruments under consideration. In response to the statement made by IATA, one delegation, supported by many other delegations, stated that it did not share IATA's view. In this connection, this delegation emphasized the need to achieve a sufficient degree of comfort at the level of Governments in order to bring the law-making process to a satisfactory conclusion and also felt that considerable progress had been made during the Joint Session in a number of areas pertaining to insolvency, registration and jurisdiction. It continued by stating that this momentum should not be lost by diligently progressing on the issues under consideration in the PILWG and Drafting Committee. These observations were endorsed by several other delegations. One delegation expressed the hope that the Plenary remained committed to the end of the year 2000 as a target date for the Diplomatic Conference. In relation to this latter issue, the Plenary stressed the importance of the inter-sessional work of both Working Groups and the need to have the results of this work available. One delegation supported by another delegation stated that, if the Convention were to benefit developing Countries, then it would be essential for these Countries to have the necessary time to prepare themselves.

6:4 One delegation cautioned against focussing only on the dates for the next Joint Session and the Diplomatic Conference and observed that the results of both Working Groups would only be available by the end of 1999, leaving little time for appropriate consultation. In relation to this point, one observer, supported by one delegation, expressed the view that the documents available already offered a sufficient basis for the ongoing consultation process. This observer also stressed the need for all participants to maintain their efforts so as to avoid any delay in the meeting schedule, bearing in mind the year 2000 as a target date.

6:5 In relation to the future work to be carried out, one delegation stated the need to reconsider the issue of the overall structure of the new legal instrument, including the possibility of the merging of the provisions of the Convention and the Protocol into one single instrument. In response to this point, one delegation expressed its support for a multi-equipment Convention.

6:6 In preparation for the next Joint Session, one delegation expressed the desire to solicit comments from other equipment sectors (Space, Railway) in order to ensure that their views were fully taken into account in the preparation of the draft Convention. In addition, this delegation suggested that Arabic

also be provided for as a working language, should it be decided to hold the next Joint Session in a place other than Montreal.

Agenda Item 7: Review of the Report

7:1 The Report was reviewed and approved with a number of amendments.

Agenda Item 8: Any other business

8:1 Two delegations reiterated the offer they had made at the first Joint Session to host the Diplomatic Conference. One of these delegations also reiterated the offer to host the International Registry.